

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5594 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ARVIND NAROTTAM LALBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR AKSHAY H MEHTA for Petitioner

MR BY MANKA ADDDL PUBLIC PROSECUTOR for Respondent No. 1

MR BB NAIK for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Mr.Akshay Mehta, appearing for the petitioner - original accused No : 5 of Criminal Case No.177 of 1993 pending in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad. A complaint is filed for the offence punishable under Section 276 C(1) and Section 277 of the Income Tax Act,

1961 against the accused No.1 & 2 and for the offence punishable under Section 276(1), 277 read with Section 278(B) of the Income Tax Act against the accused No.2 to 5, which is relevant for the purpose. Mr.Mehta has submitted that on the various contentions are raised by the petitioner, on merits, in this petition the complaint can be turned down. But without going into the merits of the matter, Mr.Mehta, firstly submitted that original accused No.5 - Mr.Arvind Narottam Lalbhai was not involved in any activity of the company because of his age. He pointed out that today he is of 81 years and on the date of the complaint, he was of 74 years of age. Mr.Mehta, has drawn my attention to one order passed by the Allahabad High Court in case of KISHANLAL VS. UNION OF INDIA AND OTHERS 1989 VOL. 169 Income Tax Reporters pg 206, wherein, the Allahabad High Court has referred guidelines (existing) and considering the policy of the Board, issued by the Board of Direct Taxes, as the accused was more than 70 years of age, prosecution against the accused under the Income Tax Act, 1961 was dropped. A query was raised by this Court, as to whether such policy / direction is still existing, and in response learned counsel for Income Tax Department Mr.Naik has confirmed that such directions are still in existence to the best available information. In my opinion, police / circulars should be interpreted as they are, but there is scope of liberal interpretation. Age on the date of prosecution in such case is relevant. This Court can direct the Additional Chief Metropolitan Magistrate to drop the proceedings but in view of the existing policy of the Department and light of the judgment rendered by the Allahabad High Court, this Court can terminate the prosecution qua accused No.5 i.e. present petitioner. It is not necessary to ask the petitioner to appear before the learned Additional Metropolitan Magistrate, Ahmedabad at the age of 81 years when undisputedly he is not keeping good health. Before parting with the order, it is necessary to mention that he has been prosecuted with the help of Section 278 (B) as he was one of the Directors of the company at the relevant point of time and was not directly involved in filing the return or any other proceedings under the Income Tax Act.

#. In view of the above submission and facts and circumstances of the case, I am inclined to allow this petition and accordingly, the proceedings of criminal case No : 177/94 pending before the learned Additional Chief Metropolitan Magistrate is ordered to be quashed and set aside qua present petitioner - accused No.5 of complaint. Rule to that extent is made absolute.

Date : 5-11-1999 [C.K.Buch,J.]

#kailash#